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August 17, 2000

Sent via e-mail and either fax, hand delivery or U.S. Mail

Mary L. Cottrell, Secretary  
Massachusetts Department of Telecommunications and Energy  
One South Station, 2nd Floor  
Boston, MA 02110

re: Verizon's DSL and DSL Line Sharing Tariff, D.T.E. 98-57 Phase III

Dear Secretary Cottrell:

Pursuant to the modified procedural schedule adopted in this proceeding on August 7, 2000, the Attorney General submits his initial brief regarding the issues of access to the digital loop carrier, accurate DSL line sharing pricing, reduced waiting for DSL, and improved DSL quality through metrics, together with a Certificate of Service.

Sincerely,

Karl en J. Reed  
Assistant Attorney General  
Regulated Industries Division

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KJR/kr

cc: Cathy Carpi no, Hearing Officer

Mike Isenberg, Director, Telecommunications Division

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Service List for D.T.E. 98-57 Phase III

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Investigation by the Department on its own motion as to )  
the propriety of the rates and charges set forth in the )  
following tariffs: M.D.T.E. Nos. 14 and 17, filed with ) D.T.E. 98-57 Phase III  
the Department on August 27, 1999, to become effective )  
September 27, 1999, by New England Telephone and )  
Telegraph Company d/b/a Bell Atlantic-Massachusetts. )  

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INITIAL BRIEF OF THE ATTORNEY GENERAL

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INITIAL BRIEF OF THE ATTORNEY GENERAL

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### I. Introduction and Summary of Argument

Pursuant to the briefing schedule established in this proceeding, the Attorney General submits his Initial Brief in which he addresses issues raised regarding tariff provisions proposed by Verizon New England, Inc., d/b/a Verizon Massachusetts ("Verizon") and formerly known as Bell Atlantic-Massachusetts, in its May 5, 2000, digital subscriber line ("DSL") and DSL line sharing tariff ("Tariff") filed with the Department of Telecommunications and Energy ("DTE" or "Department"). (1) The Attorney General has reviewed the Tariff and the testimony submitted by Verizon, Rhythms Links, Inc. ("Rhythms"), Covad Communications Company ("Covad"), Digital Broadband Communications, Inc. ("DBC"), and AT&T Communications of New England, Inc. ("AT&T").

The Attorney General urges the DTE to revise the Tariff to make DSL and other advanced telecommunication broadband services available to more Massachusetts consumers with less delay and fewer errors. To attain this goal, the Attorney General urges the Department

to:

Expand opportunities for competition by giving competitive local exchange carriers ("DLECs") access to loops that contain a digital loop carrier ("DLC");

Price DSL more accurately by reducing proposed DSL line sharing charges which are not based on actual DSL line sharing costs or a DSL line sharing cost studies by 50% as interim rates, pending final cost studies.

Reduce consumers' waiting time for DSL by reducing two intervals and by requiring Verizon to mechanize its Massachusetts operation support systems ("OSS") for DSL line sharing by April 1, 2001; and

Improve the quality of DSL service by referencing DSL metrics in the Tariff.

### II. Statement of the Case

On May 5, 2000, Verizon proposed revisions to its M.D.T.E. Tariff No. 17 to implement a DSL and DSL line sharing offering as directed by the Department's Order of March 24, 2000, in D.T.E. 98-57, and by the Federal Communications Commission's ("FCC") Order in CC Docket Nos. 98-147 and 96-98 (FCC 99-355) (released December 9, 1999). On May 25, 2000, the Department suspended the tariff revisions until September 18, 2000, and the Tariff is being investigated in connection with a petition for arbitration over DSL line sharing issues filed by Covad on April 26, 2000. On August 9, 2000, the Department extended the suspension until October 2, 2000. The Attorney General and several carriers intervened in the proceeding, (2) and the parties issued discovery on the rates, terms and conditions of Verizon's DSL and DSL line sharing offering. The Department conducted evidentiary hearings at its

Boston offices on August 1-3, 2000, during which Verizon, Rhythms, Covad, AT&T, and DBC sponsored witnesses. (3)

### III. Argument

The Attorney General urges the Department to allow competitors access to fiber optic cables containing digital loop carriers, to set interim prices for line sharing until the Department approves a line sharing cost study by Verizon, to reduce tariff completion intervals, to require Verizon to mechanize its line sharing OSSs by April 1, 2001, and to reference DSL line sharing metrics in the Tariff.

#### A. The DLECs Should Have Access to Loops containing Digital Loop Carriers.

One issue in this case is whether Verizon should be required to allow DLECs to offer DSL services via line sharing over fiber loops containing a DLC (Tr. at 649). A DLC is an electronic device (about the size of a stereo) connected to a copper loop, or a copper-and-fiber loop, and designed to serve subscribers located beyond Verizon's carrier serving area, which is currently 12,000 feet from a Verizon central office (Tr. at 421, 427-428). The DLECs want access to the DLCs that Verizon upgrades to provide DSL service, and Verizon contends access should be denied because the upgraded DLCs may be attached to fiber optic cable, as well as copper. The DTE should reject Verizon's position because it contradicts the FCC's Line Sharing Order in which the FCC required incumbent local exchange carriers like Verizon to make loops that contain a DLC available to DLECs. (4) Furthermore, this position reduces the ability of DLECs to compete in offering broadband services through DSL technology to those Massachusetts consumers who do not live close to a central office or live outside of population centers. (5)

If the DTE denies DLECs access to DLC loops, a significant portion of the population will be denied access to DSL without justification. Verizon witness John White admitted that at least 5 percent of Verizon's 4.7 million access lines in Massachusetts contain a DLC (Tr. at 558-561), and Covad witness Michael Clancy testified that the number is greater than 8.6 percent (Tr. at 451). Those percentages equate to either 235,000 or 404,200 access lines. Those numbers, representing mostly residential customers, are substantial enough to merit every effort by the DTE to bring competitive data service through line sharing to these customers (Tr. at 421, 451-452). (6)

Allowing DLECs to have access to loops that contain a DLC is a progressive step that reflects changing technologies and increased competition to provide broadband services. The DTE should grant the DLECs' request for access to loops that contain either a DLC or a "next generation" DLC and should modify the Tariff so that more Massachusetts consumers may reap the benefits of DSL technology.

#### B. DSL Line Sharing Rates Should Be Priced More Accurately.

Verizon has proposed numerous line sharing rates in its Tariff, some of which are based on standard collocation activities, not line sharing activities. Amy Stern, witness for Verizon, admitted that the proposed line sharing application fees, engineering and installation augment fees, and the cross-connect or tie cable connections fees are based on collocation activities approved by the DTE, not on actual line sharing activities (Tr. at 566). (7) This results, however, in rates that may be overinflated if the actual costs and labor involved in performing these activities is far less than the work involved in standard collocation activities, so

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that Verizon recovers more than the costs involved in providing that service.

For example, Rhythms/Covad witness Patricia Kravtin used the proposed splitter placement application fee as an example of overinflated line sharing charges that are based on collocation activities (Rhythms/Covad Direct Testimony at 172-173). Ms. Kravtin testified that the application fee to augment a competitor's collocation arrangement (\$1,500) is based on collocation charges imposed to process a 14-page application form, whereas Verizon's New York counterpart recently agreed in the New York Public Service Commission ("NYPSC") DSL collaborative proceeding to use just a 3½-page application for line sharing (Rhythms/Covad Direct Testimony at 172). Another example cited by Ms. Kravtin is the proposed \$1,453.09 charge for engineering and implementation fee, which Ms. Kravtin asserts should be reduced by half because a point of termination bay is not necessary since direct connection to Verizon's network at the main distribution frame is technically feasible (Tr. at 174-175; RLI/CVD Exh. 116, 117).

Because these line sharing charges are not based on line sharing activities, the record developed in this case does not support the charges. Consequently, the DTE should reject them and impose interim rates subject to prospective adjustment following line sharing cost studies conducted by Verizon and adopted by the DTE. The NYPSC reached a similar conclusion during its consideration of DSL nonrecurring charges in 1999, in which the NYPSC set interim rates and scheduled subsequent DSL rate hearings to begin October 16, 2000. (8) The New York proceedings could form the basis for Verizon's cost studies for Massachusetts.

The DTE must then determine what rates to use as interim rates for those line sharing charges which are not based on actual line sharing activities. Rhythms and Covad have proposed either specific interim rates or a 50% reduction of Verizon's proposed rates (See, e.g., Rhythms and Covad Direct Panel Testimony at 169, 171, 174, and 175). Although Verizon may challenge this assessment, Verizon offers no alternative rates except the collocation rates which clearly do not reflect line sharing activities. The Attorney General recommends that the DTE adopt the Rhythms/Covad proposed rates as interim rates, and that the interim rates go into effect immediately, subject to prospective revision by the DTE based on line sharing cost studies. The reduced rates will provide Verizon incentive to conduct and submit line sharing cost studies in an expeditious fashion.

C. The DTE Should Speed Up Verizon's Intervals and Require Verizon's Mechanized OSS Line Sharing Systems to be Functional by April 1, 2001.

Another way to improve DSL service in Massachusetts is to reduce the waiting time that customers experience in obtaining DSL. The DTE should shorten two time intervals contained in the Tariff, the 6-day provisioning interval and the 76-day collocation augment interval, to reduce waiting time while allowing for increased efficiency that results from line sharing. Additionally, the DTE should obtain Verizon's commitment to implement its DSL line sharing OSS by April 1, 2001, to ensure accurate and nondiscriminatory delivery and repair of DSL services to Verizon's separate data affiliate and to DLECs.

1. The provisioning interval and collocation augment interval should be at least as short as New York's and Pennsylvania's intervals.

Verizon has proposed 6 business days as the time interval to provision non-dispatch orders for DSL on pre-qualified loops. That proposal, however, is based on standard intervals to provide a new stand-alone DSL loop, not on line sharing-specific intervals (Verizon Rebuttal Testimony at 14; Rhythms/Covad Direct Testimony at 38). Similarly, Verizon has not based its proposed collocation augmentation interval of

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76 days on line sharing-specific intervals but, instead, on the standard collocation interval (Verizon Rebuttal Testimony at 21; Rhythms/Covad Direct Testimony at 49). Rhythms, Covad, and DBC contend that these intervals do not reflect the actual work involved in providing these services, and can be shortened to a 3/2/1 business day provisioning interval (9) and a 30 day collocation augmentation interval (Rhythms/Covad Direct Testimony at 38, 40-41, 47-48; DBC Direct Testimony [supporting the 3/2/1 schedule] at 16). (10)

These same issues are under consideration in DSL proceedings in New York and in Pennsylvania, in which Verizon, Rhythms, and Covad have appeared using many of the same witnesses. (11) A Pennsylvania administrative law judge has recommended that the Pennsylvania Public Utilities Commission ("PAPUC") adopt the 3/2/1 schedule for provisioning intervals and 30 days for collocation augments, and a New York administrative law judge is expected to issue his recommendations on these issues in September. (12) Both the Pennsylvania and New York commissions must approve these recommendations before they become effective in their respective states. (13)

Verizon witness John White admitted during the DTE hearings that a 5 business day provisioning interval can be achieved by January 1, 2001, when Verizon's separate data affiliate is expected to begin operating in Massachusetts (Tr. at 156). (14) The separate data affiliate will operate under the same interval as DLECs, according to Verizon, and Verizon agreed to consider further reductions in the provisioning interval as Verizon increases its line sharing experience. (15) Thus, Verizon confirms that it can shorten the proposed 6 business day interval to provision DSL line sharing orders.

Massachusetts consumers deserve to receive DSL line sharing services at least as quickly as New York and Pennsylvania consumers. Consequently, the DTE should reduce the Tariff's provisioning interval and collocation augmentation interval to the shorter of the intervals adopted by the NYPSC or PAPUC.

2. The OSS for DSL line sharing should be functioning by April 1, 2001.

Verizon has not set a specific date by which its OSS for DSL line sharing will be fully mechanized. The DLECs have asked the DTE to require that the OSS be functioning by March 1, 2001, the same date that the Pennsylvania administrative law judge has recommended that Verizon-Pennsylvania be obligated to make its DSL Line Sharing OSS functioning in Pennsylvania. (16) Mechanized OSS systems result in fewer pre-ordering, ordering, and provisioning errors, and the customer ultimately receives service and repair faster than under manual OSS systems. Therefore, Verizon should bring the DSL OSS on line in Massachusetts as quickly as possible.

Verizon witness David Kelly testified that Verizon expects to issue a final acceptance of the upgraded OSS from its vendor, Telcordia, on February 15, 2001, and that, in planning major upgrades across the Verizon footprint for the line sharing OSS, Verizon anticipates using a one-month interval between regions (Tr. at 479-481). Rhythms witness Robert Williams testified that a Pennsylvania administrative law judge recommended to the PAPUC that Verizon-PA's line sharing OSSs be functional as of March 1, 2001 (Tr. at 475). This same issue was discussed during the July 17 and 18 technical sessions in New York, and Rhythms witness Robert Williams asked the administrative law judge to set a similar date for New York. (17)

Pennsylvania, New York, Massachusetts, and all states within the Verizon service territory are, essentially, all vying for the first available slots for OSS line sharing mechanization. The DTE should order Verizon to implement mechanized DSL line sharing OSS in Massachusetts as soon as possible, but no later than April 1, 2001, to ensure that Massachusetts will be next in line after Pennsylvania to receive the benefits of mechanized, as opposed to manual, OSS systems. If the DTE hesitates or fails or act, Massachusetts consumers will experience increased delays because their orders will be processed manually, rather than mechanically.



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D. The DTE should reference DSL and DSL line sharing metrics in the Tariff.

The Tariff should reference the existence of DSL and DSL line sharing metrics that the DTE will adopt pursuant to its November 19, 1999, and January 14, 2000, letter orders in DTE 99-271, Verizon's Section 271 Filing. In a supplemental affidavit regarding DSL metrics filed by Verizon with the DTE in DTE 99-271 on August 4, 2000, Verizon witnesses Beth A. Abesamis and Julie A. Canny stated as follows:

DSL/line sharing metrics have been proposed and have reached the consensus stage in the [New York] Carrier Working Group. Measures for DSL services will be disaggregated between DSL loops and line sharing. Line sharing will be compared to service provided by Verizon-MA to its data affiliate. It is expected that these measures will be submitted to the New York PSC in the September/October time period. If these consensus items are approved, the New York PSC will issue an order to modify the guidelines. Verizon-MA will comply with the Department's directive that changes made in New York metrics will automatically be applied in Massachusetts.

DTE 99-271, Verizon-MA's Section 271 Filing, Supplemental Measurements Affidavit, at 12.

The DTE has decided to adopt the New York Carrier-to-Carrier metrics as the performance metrics for Massachusetts. Therefore, as soon as the NYPSC approves DSL and DSL line sharing metrics, the DTE should adopt the same metrics. To notify carriers who provide DSL service under the Tariff of the existence of these performance metrics, the Tariff should include a reference to the existence of DSL and DSL line sharing metrics as adopted by the DTE.

IV. Conclusion.

For all of the foregoing reasons, the Attorney General urges the Department to: (1) give DLECs access to loops that contain a DLC; (2) reduce all line sharing charges not based on actual line sharing costs or activities by 50% as Rhythms and Covad request as interim rates pending prospective revision pursuant to new Verizon line sharing cost studies; (3) reduce the provisioning interval and the collocation augment interval, and require Verizon to implement its OSS for DSL line sharing by April 1, 2001; and (4) reference DSL and DSL line sharing metrics as part of this Tariff.

Respectfully submitted

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Dated: August 17, 2000

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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#### CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding by e-mail and either hand-delivery, mail, or fax.

Dated at Boston this 17th day of August 2000.

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1. DSL technologies, commonly referred to as "DSL," allow a telephone subscriber to use the same telephone line for both voice and data communications, rather than requiring the subscriber to purchase a second phone line for data. This is accomplished by separating or splitting the lower wavelength frequency portion of the telephone line from the higher frequency so that the phone user may send and receive phone calls over the lower frequencies and access data and broadband services, like using the Internet, over the higher frequencies. Line sharing refers to allowing a competitive data local exchange carrier ("DLEC") to provide the phone user with high frequency broadband services while Verizon continues to provide the customer with low frequency voice services.

2. The Department granted full intervenor status to AT&T, Association of Communications Enterprises, CTC Communications Corp., Choice One Communications, Inc., Corecomm Massachusetts, Inc., Covad, DBC, Global NAPs, Inc., Intermedia Communications, Inc., MGC Communications, Inc., MediaOne Telecommunications of Massachusetts, Inc., NEXTLINK, Network Plus, Inc., NorthPoint Communications, RCN-BecoCom, Rhythms, RNK, Inc., Sprint Communications Company, Vtts Network, Inc., WorldCom, Inc., and Z-Tel Communications, Inc., and limited participant status to Adelphia Business Solutions Operations, Inc., Conversent Communications of Massachusetts, J. Joseph Lydon, Network Access Solutions Corporation, and Net2000 Communications, Inc.

3. Amy Stern, Bruce F. Meacham, John L. White, David J. Kelly, Augie Trinchese, and James Virga testified on behalf of Verizon; Robert G. Williams testified for Rhythms; Mike Zulevic and Michael Clancy testified for Covad; Joseph P. Riolo and Patricia Kravtin testified for both Rhythms and Covad; Terry Landers testified for DBC; and William D. Salvatore testified for AT&T.

4. In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98 (released December 9, 1999), FCC 99-355 ("FCC Line Sharing Order") at ¶¶ 88-92. "[W]e conclude that incumbent LECs are required to unbundle the high frequency portion of the local loop even where the incumbent LEC's voice customer is served by DLC facilities." Id. at ¶ 91.

5. In a recent report released by the FCC as part of a nation-wide survey, the FCC identified the number one group of Americans most vulnerable to not having high speed access as rural Americans, particularly those outside of population centers. FCC News Release, Report on the Availability of High-Speed and Advanced

Telecommunication Services, CC Docket No. 98-146 (rel. August 3, 2000).

6. Consumers who live in urban, suburban, and rural areas more than 12,000 feet from a Verizon central office generally can receive voice communications from Verizon but may not get DSL. Some of these consumers may, however, be able to obtain DSL service by DLECs who, with access to the DLC, can extend their DSL reach beyond 12,000 feet.

7. Standard collocation activities may include setting up entire cages for DLEC equipment to be located on Verizon's premises and, according to Rhythms and Covad, are more extensive than line sharing activities, which may involve as little as removing a cross-connect wire and replacing it with two different wires and the splitter (Rhythms/Covad Direct Testimony at 48; Rhythms response to RR-DTE 13).

8. NYPSC Case 98-C-1357, Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements, Ruling Extending Module 3 Schedule, Setting a Separate Schedule for Line Sharing Rates (issued March 17, 2000), at 4; Opinion and Order Concerning Line Sharing Rates (issued May 26, 2000), at 1, 42-43.

9. Rhythms, Covad, and DBC testified that a shorter DSL line sharing provisioning interval is possible and should be adopted -- 3 business days for orders placed with Verizon up to September 7, 2000, 2 business days up to December 7, 2000, and 1 business day thereafter -- although these intervals are not based on actual line sharing experience in Massachusetts.

10. Covad asserts that a 45 calendar collocation augment interval is achievable, as demonstrated in its interconnection agreements with US West in Oregon, Minnesota, and throughout the US West territory. See Covad's response to RR-AG-1.

11. NYPSC Case 00-C-0127, Letter/Ruling Establishing Technical Conference Scope and Schedule (dated June 22, 2000), at 1.

12. Id.; Petition of Covad Communications Company for an Arbitration Award Against Bell Atlantic-Pennsylvania, Inc. Implementing the Line Sharing Unbundled Network Element and Petition of Rhythms Links, Inc., for an Expedited Arbitration Award Implementing Line Sharing, PAPUC Docket No. A-310696F0002 and A-310698F0002, Recommended Decision (June 28, 2000) ("PAPUC Recommended Decision") at 8.

13. The PAPUC is expected to release its final order on this issue by August 17, 2000. Tr. at 414.

14. January 1, 2001, is the date upon which Verizon's separate data affiliate, currently named Bell Atlantic Network Data, Inc. ("BANDI") and currently operating only in New York, is expected to become functional in Massachusetts (Tr. at 12).

15. Verizon Rebuttal Testimony at 14.

16. PAPUC Recommended Decision at 9.

17. RLI/CVD Exh. 119 at 238